

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

MICHELLE ROSARIO ROSADO

Debtor/ Plaintiff

FIRSTBANK Puerto Rico

Creditor/ Defendant

CASE No. 17-00046 (ESL)

Adv. Proc.: 17-00128 (ESL)

CHAPTER 13

ANSWER TO THE COMPLAINT

TO THE HONORABLE COURT:

Comes now **FIRSTBANK PUERTO RICO**, a domestic corporation appearing through its undersigned attorney, and brings this motion to the attention of Honorable Bankruptcy Court its answer to the complaint filed in adversary proceeding no. 17-00128 (ESL):

INTRODUCTION

1. Accepted only as to Plaintiff's intention towards Defendant' secured claim.

JURISDICTION OF THIS COURT

2. Accepted.

VENUE

3. Accepted.

PARTIES

4. Accepted.
5. Accepted.

FACTS

6. Accepted.
7. Accepted.
8. Accepted.
9. Denied for lack of knowledge towards the millage of the vehicle at the time of the filing of the petition; accepted only as Plaintiff's proposal towards Defendant' secured claim.

10. Denied as to the provided as value of the collateral.
11. Accepted as to the filing of a plan dated January 7, 2017 under legal docket no. 2, and Denied as to the remaining information of the sentence.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Accepted.
17. Accepted as to the “cramdown” option exercised by Plaintiff; denied as Defendant’s acceptance of the same.
18. Accepted.
19. Accepted as to the citation of the case, Denied as to Plaintiff’s conclusion towards it.
20. Accepted as to the citation of the case, Denied as to Plaintiff’s conclusion towards it.
21. Denied.

AFFIRMATIVE DEFENSES

1. Defendant FIRSTBANK Puerto Rico is a fully secured creditor and as such should be recognized and paid in Debtor’s proposed chapter 13 plan.
2. In the present case Defendant FIRSTBANK Puerto Rico has been deprived from receiving full payment for its secured debt as claimed.
3. The complaint at bar fails to allege a cause of action for which a remedy must be granted.
4. Plaintiff’s action is time barred.
5. Plaintiff is not entitled to the requested remedy since the vehicle under its name has a higher value.
6. As per the Appraisal Report performed by Mr. Sixto Lugo, the value of Defendant’s collateral is estimated in **\$12,250.00**. (Copy of the Appraisal Report has been included with this answer as *Attachment “A”*.)
7. The leading U.S. Supreme Court decision of *Lee M. Till, et ux vs. Credit Corporation*, 541 U.S. 465 (2004), requires the bankruptcy court to adjust the prevailing prime rate to a greater

amount, considering the non-payment risk factors such as the estate circumstances, the security's nature, the chapter 13 plan's duration, compliance with the feasibility test, and the completion rate in the jurisdiction in which the vehicle is in.

8. Pursuant to the *Till* analysis, the applicable interest in the case at bar is 6.25% (3.75% prime rate + 2.50% risk factor). Considering the appraised value of the collateral in \$12,250.00 x 6.25%, leaves the secured portion of Defendant's claim in \$14,296.80. (See Attachment "B".)

9. Insurance quote must be provided from the filing of the voluntary petition, pursuant to the provisions of 11 USC §1326 (a)(4), in order to protect the insured in the event of damage or loss. *In re Derickson*, 226 B.R. 879, 881-82 (Bankr.S.D.Ill 1998), citing *In re Feher*, 202 B.R. 966, 970-71, (Bankr.S.D.Ill 1996); *In re Stevens*, 130 F.3d 10271030 (11th Cir.1997).

10. Defendant FIRSTBANK Puerto Rico expressly reserves the right to retain the lien securing its proof of claim until the earlier of (i) the full payment of its claim as determined under bankruptcy law or (ii) the entry of a discharge order pursuant to section 1328 of the Bankruptcy Code (11 U.S.C.), in light of the decision of *In re Fareed*, 262 BR 761 (Bankr. ND Ill 2001) and *In re Picht*, 428 BR 885 (BAP 10 Cir. 2010).

11. Defendant FIRSTBANK Puerto Rico also expressly reserves the right to amend its answer to the complaint and include any defense that may arise during the discovery process.

REMEDY

In compliance with the highest ethical standards and according to the principles of common law, Defendant FIRSTBANK Puerto Rico very respectfully requests from this Honorable Court to grant this Answer to the Complaint and:

a. determine that the actual value of Plaintiff's vehicle (a 2014 Mitsubishi Outlander) is \$12,250.00;

b. determine that the secured portion of Defendant's claim (the value of the collateral with a 6.0% annual interest) is \$14,296.80;

c. order Plaintiff to provide adequate protection payments in the amount of **\$100.00** to Firstbank's claim no. 1, retroactive to the filing of Defendant's proof of claim,

d. order Plaintiff to provide insurance for the collateral at all times until the secured portion of Defendant's claim is *paid-off*, and to

WHEREFORE and for the above stated reasons, FIRSTBANK Puerto Rico respectfully

requests from this Honorable Court for each and every ground stated herein, to grant this motion.

NOTICE

Within fourteen (14) days after service as evidenced by the certification, and additional three (3) days pursuant to Fed. R. Bankr. P. 9006 (f) if you were served by mail, any party against whom this paper has been served, or any party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's Office Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise. Local Bankruptcy Rule 9013-1 (c)(1).

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, the 14th day of July, 2017.

CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and correct copy of the present motion was sent by the CM/ECF System to: all creditors; José R. Carrión Morales, Esq., Chapter 13 Trustee; Juan O. Calderón Lithgow, Esq. counsel for Debtor; and by regular mail to Debtor at the address on record: Buzón 7 calle 9, Bo. Carmelita, Vega Baja, P.R. 00693, as per the attached *List of Creditors*.

//s// Maricarmen Colón Díaz
MARICARMEN COLON DIAZ, Esq.
Attorney for Movant - USDC 211410
MARIA M. BENABE RIVERA– USDC 208906
Centro Servicios al Consumidor (248)
1130 Muñoz Rivera Ave., San Juan, P.R.
P.O. Box 9146, Santurce, P.R. 00908-0146
Tel. (787) 729-8135 / Fax (787) 729-8276
maricarmen.colon@firstbankpr.com

Attachment "A"

Contact Information

7/8/2017

Company: Individual Users
 Contact: Sixto Lugo
 E-Mail: advanceestimate@gmail.com

Telephone: 787-934-4499
 Fax:

Notes

BLACK BOOK RETAIL
 \$13175 - 812 = \$12363.00

\$12250.00

Vehicle Info For 2014 Mitsubishi Outlander ES 4D SUV FWD

MSRP: \$22,995	VIN: JA4AD2A38EZ010463	Adj. State: National
Fin Adv: \$11,975	UVC: 2014620169	Mileage: 33001
Equip Ret: \$24,824	MPG: 25/31	Mileage Cat: D
Tire Size: 215/70R16	Weight: 4564	Cylinders: 4
Base HP: 166 @ 6000	Fuel Type: Gas	Transmission: A
Taxable HP: 18.6	Wheelbase: 105.1	Drive Train: FWD
Model Number: OT45A	End of Term Months: 0	End of Term Mileage: 0
Price Includes: AT AC		

Wholesale Black Book values as of 7/1/2017

	X-CL	Clean	Average	Rough
Base	\$12,150	\$10,750	\$9,050	\$7,450
Options	\$0	\$0	\$0	\$0
Mileage	\$350	\$675	\$1,000	\$1,175
Region	\$0	\$0	\$0	\$0
Total	\$12,500	\$11,425	\$10,050	\$8,625

Trade In Black Book values as of 7/1/2017

	X-CL	Clean	Average	Rough
Base	N/A	\$11,100	\$9,475	\$7,075
Options	N/A	\$0	\$0	\$0
Mileage	N/A	\$675	\$1,000	\$1,175
Region	N/A	\$0	\$0	\$0
Total	N/A	\$11,775	\$10,475	\$8,250

Retail Black Book values as of 7/1/2017

X-CL	Clean	Average	Rough

	X-CL	Clean	Average	Rough
Base	\$15,925	\$14,300	\$12,175	\$10,325
Options	\$0	\$0	\$0	\$0
Mileage	\$350	\$675	\$1,000	\$1,175
Region	\$0	\$0	\$0	\$0
Total	\$16,275	\$14,975	\$13,175	\$11,500

Residual Black Book values as of 7/1/2017

	12 Month	24 Month	30 Month	36 Month
Base Miles	62K - 65K	80K - 83K	86K - 89K	92K - 95K
Base Residual	\$7,650	\$6,550	\$5,800	\$5,625
% ERT*	31%	26%	23%	23%
Add/Deducts	\$0	\$0	\$0	\$0
Adj. Residual	\$7,650	\$6,550	\$5,800	\$5,625
	42 Month	48 Month	60 Month	72 Month
Base Miles	98K - 101K	101K - 104K	113K - 116K	122K - 125K
Base Residual	\$4,950	\$4,800	\$4,075	\$3,425
% ERT*	20%	19%	16%	14%
Add/Deducts	\$0	\$0	\$0	\$0
Adj. Residual	\$4,950	\$4,800	\$4,075	\$3,425

Base residual values are projected values for typically equipped vehicle in average condition with indicated miles. Residual values are published 7 times a year: January, March, May, July, September, October, and November.

*ERT: Typically equipped retail price

End-of-Term Black Book values as of 7/1/2017

	Date	Expected Miles	Base Miles
Start	N/A	N/A	N/A
EOT	N/A	N/A	N/A
	Value		
Base	N/A		
% Equipped Retail	N/A		
Miles Adjustment	N/A		
Add/Deducts Adjustment	N/A		
EOT Residual	N/A		

NOTE: Be sure to enter the end of term date and miles in order to get proper End of Term results. If the date range spans more than 72 months, then 72 month adjusted residual will be returned as the End-of-Term Value.

Black Book Add/Deducts

Entertainment System +600
Navigation System +750

Hoja de Cálculo del Contrato

07/14/2017

Nombre Comprador : MICHELLE ROSARIO ROSADO

Vendedor : *Case # 17-00046 // 17-AP-128 (ESL/JRC)*

Tipo de Préstamo:	Convencional
Fecha de Contrato:	7/14/2017
Fecha de Primer Pago:	8/15/2017
APR:	6.25 %
Término:	60
Precio de Venta:	12,250.00
Accesorios:	0.00
Servicios:	0.00
= Total	12,250.00
Pronto Pago:	0.00
Trade-in:	0.00
Residual:	0.00
Tipo de Automóvil:	USADO
Seguro de Cuenta:	POR CLIENTE 0.00

	<u>Principal</u>	<u>Intereses</u>
Balance a Financiar:	12,250.00	
+ FirstBank PPP:	0.00	
+ FirstBank PPP GAP:	0.00	
 + Derrama:	0.00	
+ Prima de Seguro:	0.00	0.00
+ Seguro GAP:	0.00	0.00
+ Contrato de Servicio:	0.00	0.00
+ Prima de Vida:	0.00	0.00
= Subtotal de Seguros	0.00	
= Principal	12,250.00	
+ Intereses:	2,046.80	
+ Gasto de Registro:	61.50	
+ Gasto de Gravamen:	15.00	
= Nota Total	14,373.30	

Primer Pago:	1	331.30
Pago Regular:	59	238.00
Ultimo Pago:	0	0.00
	60	14,373.30

Label Matrix for local noticing
0104-3
Case 17-00046-ESL13
District of Puerto Rico
Old San Juan
Fri Jul 14 14:02:08 AST 2017

US Bankruptcy Court District of P.R.
Jose V Toledo Fed Bldg & US Courthouse
300 Recinto Sur Street, Room 109
San Juan, PR 00901-1964

(p) COOP A C DE MANATI
PO BOX 30562
MANATI PR 00674-8516

FED LOAN SERV
PO BOX 60610
HARRISBURG, PA 17106-0610

Synchrony Bank
c/o of PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541-1021

JUAN O CALDERON LITHGOW
JUAN O CALDERON LITHGOW LEGAL OFFIC
PO BOX 1710
VEGA BAJA, PR 00694-1710

COOP A/C SAN JOSE
JOSE A SANTINI BONILLA ESQ
PO BOX 552
AIBONITO, PR 00705-0552

AVANTE
3600 SOUTH GESSNER
HOUSTON, TX 77063-5357

COOP SAN JOSE
APARTADO 2020
AIBONITO, PR 00705-2020

FIRST BANK
CONSUMER SERVICE CENTER
BANKRUPTCY DIVISION -CODE 248
PO BOX 9146, SAN JUAN PR 00908-0146

U. S. Department of Education
c/o FedLoan Servicing
P. O. Box 69184
Harrisburg, PA 17106-9184

MICHELLE ROSARIO ROSADO
BUZON 7 CALLE 9
BO CARMELITA
VEGA BAJA, PR 00693-3718

FIRSTBANK PR
PO BOX 9146
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BANCO POPULAR DE PUERTO RICO
BANKRUPTCY DEPARTMENT
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SAN JUAN, PR 00919-1429

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MONSITA LECAROS ARRIBAS
OFFICE OF THE US TRUSTEE (UST)
OCHOA BUILDING
500 TANCA STREET SUITE 301
SAN JUAN, PR 00901

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

COOP A/C/ MANATI
PO BOX 30562
MANATI, PR 00674

End of Label Matrix
Mailable recipients 17
Bypassed recipients 0
Total 17